

**APR 11 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

**RICHARD EPSTEIN,**

**Plaintiff,**

**and**

**JEROME ZAMOS; THE JEROME ZAMOS  
RETIREMENT TRUST, u/d/t/ December 31,  
1997,**

**Claimants - Appellants,**

**v.**

**SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP, dba  
Kaiser Permanente Medical Group,**

**Defendant - Appellee.**

**Nos. 02-56242, 02-56387**

**D.C. No. CV-95-08489-MLR**

**MEMORANDUM\***

**Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding**

**Submitted February 14, 2003\*\***

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**\*/ This disposition is not appropriate for publication and may not be cited to or  
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.**

**\*\* This panel unanimously finds this case suitable for decision without oral  
(continued...)**

Before: KLEINFELD and GRABER, Circuit Judges, and BOLTON,<sup>\*\*\*</sup> District Judge.

A. The Claim of Exemption

Zamos claims that the March 27 assignment to the Trust of the Truesdell fees shields those fees from his creditors under Cal. Civ. Proc. Code § 704.115(b). We disagree.

The Truesdell fees are not exempt because they have never been "held, controlled, or in process of distribution by a private retirement plan." Id. At the time of the levy, the funds were "held" or "controlled" by Truesdell, not by the Trust. Although Zamos had temporary custody of the check, the check was made out to Truesdell and delivered to Zamos only as her agent. Nor were the funds "in process of distribution by" the Trust. The Truesdell fees never even made it into the Trust, so they could not have been in the process of being distributed by the Trust. See Lieberman v. Hawkins (In re Lieberman), 245 F.3d 1090, 1095 (9th Cir. 2001) (noting that Cal. Civ. Proc. Code § 704.115 does not exempt all assets that a debtor intends to use for retirement).

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<sup>\*\*</sup>(...continued)  
argument. Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

Zamos relies on Flannery v. Prentice, 28 P.3d 860 (Cal. 2001), a case that does not help him. Flannery holds that, as between a lawyer and client, fee awards in California Fair Employment and Housing Act ("FEHA") actions belong to the lawyer unless there is a contractual agreement to the contrary. Id. at 863. This proposition is not disputed; indeed, only because the fees belonged to Zamos could they be levied on to satisfy the 1996 judgment. Flannery concerns ownership, not possession. It does not change the fact that Truesdell "held" or "controlled" the fees at the time of the levy, as those terms are used in Cal. Civ. Proc. Code § 704.115(b).

B. The Rule 60(b) Motion

Judge Real had subject matter jurisdiction over the FEHA claim. We so held, expressly, in an earlier unpublished disposition. Epstein v. S. Cal. Permanente Med. Group, 141 F.3d 1175, 1998 WL 133263, at \*\*1 (9th Cir. 1998) (unpublished disposition).

Thus, the fact that the district court properly exercised jurisdiction over the merits of the FEHA claim is the law of the case. It follows that the district court properly exercised subject matter jurisdiction over the ancillary attorney fees issue. See 28 U.S.C. § 1441(c) ("Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with

one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein. . . .") (emphasis added)). The fee judgment was not void for lack of jurisdiction.

Zamos' main argument is that the district court erred in holding him personally liable for the attorney fees award under FEHA. But even if the court misinterpreted FEHA, such an error would not affect jurisdiction. An error of law does not render a judgment void under Rule 60(b)(4). United States v. Berke, 170 F.3d 882, 883 (9th Cir. 1999). Rather, this argument could have been raised directly, on appeal. Because Zamos did not file a notice of appeal with respect to the attorney fees order, he missed that opportunity.

Zamos also argues that the judgment violates due process because the motion and judgment failed to identify him. That is incorrect. The caption of the motion sought fees against "Plaintiff and his attorney." The body of the motion sought fees from "Plaintiff and his attorney, jointly and severally." Zamos was the plaintiff's only attorney, and he appeared at the hearing specifically to oppose the fee award against his client and himself. The order granting the motion noted the presence of "Jerome Zamos, counsel for Plaintiff" just before ordering "Plaintiff and his attorney" to pay the requested fees.

AFFIRMED.